EDITOR'S NOTE

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

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UNITED STATES OF AMERICA)

V) NO. 85-998

RONALD DALE DUNN)

MOTION TO PROCEED
IN FORMA PAUPERIS

COMES NOW the Respondent, RONALD DALE DUNN, and based upon the attached affidavit request that he be granted the authority to proceed in forma pauperis.

Respectfully submitted,

LOUIS DUGAS, JR., P.L.C.

LOUIS DUGAS, JR.
1804 N. 16th Street
Orange, Texas 77630
409-883-3506
State Bar Card No. 06173000

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

UNITED STATES OF AMERICA)

V) NO. 85-998

RONALD DALE DUNN

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED
ON APPEAL IN FORMA PAUPERIS

I, RONALD DALE DUNN, being first duly sworn, depose and say that I am the respondent, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor.

I further swear that the response which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? yes

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. $140.00 / MONTH
Federal Correctional Institution
P.O. Box 1010
Bastrop, Texas 78602

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings accounts: No

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No

a. If the answer is yes, described the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Betty Jean Dunn - Wife
Coquina A. Dunn - Daughter
Asa Edward Dunn - Son

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Ronald Dale Dunn
RONALD DALE DUNN

STATE OF TEXAS)
COUNTY OF BASTROP)

Subscribed and sworn to before me this 17th day of December, 1985.

Pat Reid
NOTARY PUBLIC

CASE MANAGER FCI BASTROP TX.
AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S. C. 4004)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

UNITED STATES OF AMERICA	)	
V.	)	NO. 85-998
RONALD DALE DUNN	)	

CERTIFICATE OF SERVICE

LOUIS DUGAS, JR., hereby certifies that he is a member of the bar of the Supreme Court of the United States and counsel for Ronald Dale Dunn, Respondent in the above matter; and that a true and correct copy of the above and foregoing Motion to Proceed In Forma Pauperis and Affidavit have been mailed to the attorney for the Petitioner, the Honorable Charles Fried, Solicitor General of the United States of America, by mail, postage prepaid, on this 10th day of February, 1986.

LOUIS DUGAS, JR.

NO. 85-998

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

UNITED STATES OF AMERICA, PETITIONER

V.

RONALD DALE DUNN

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEAL
FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

LOUIS DUGAS, JR.
1804 N. 16th Street
Orange, Texas 77630
409-883-3506

Attorney for Respondent

QUESTION PRESENTED

Where a barn is located in a clearing surrounded by woods on a 198-acre ranch circled by a perimeter fence; ranch house and buildings are located at the end of a private drive approximately one half mile from public road; entrance to private road secured by locked chain; barn was not visible from the public road or perimeter fence; contents of barn could not be seen from air or ground unless barn approached by one penetrating encircling fence, walked under its overhang, stood next to fishnet front covering; and entry could be made only by force or hurdling wooden gates which were locked; is the owner of the barn entitled to a reasonable expectation of privacy in this barn?

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NO. 85-998

UNITED STATES OF AMERICA, PETITIONER

V.

RONALD DALE DUNN

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals on remand from this Court is reported at 755 F.2d 880. The original opinion of the court of appeals is reported at 674 F.2d 1093. The opinion vacating 766 F.2d 880 is attached as Appendix 1.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

STATEMENT OF THE CASE

Respondent is in agreement with much of petitioner's statement of the case. The following constitute the respondent's statement of the area with which he disagrees with the petitioner.

After trespassing upon the ranch owned by Ronald Dale Dunn and conducting a visual and systematic search of the barns, garage, house and carport areas of the ranch, officers came to the barn where they smelled an odor which was not contraband. They tried a door to

the barn and found it locked. They crossed another fence and at that point they were right underneath the overhang of the barn where a gate led further into the barn. They tried this gate and found it locked and shut. Above this gate was a netting which hung from the ceiling to the gate. They stood right at the gate and began their search with the aid of flashlights. R-4-80.

The officers looked into the carport and then tried to enter the garage by trying the windows and the doors and everything was locked up. These trespassing officers searched only buildings on the property. R-4-83.

ARGUMENT

The government's simplified approach to the facts makes it appear there is no distinction between county and city. The question presented: Whether a search warrant is needed to peer into the open side of a barn that is located in an open field, further lends the impression that one can peer into a barn as easily as one peers into the show windows of Bergdorf-Goodman in New York City. The government in its petition additionally says:

(1) ". . . the police were entitled to approach the barn just as a member of the public might reasonably have been expected to do." (Pet. Cert. 8)

(2) "Respondent had no reasonable expectation that a member of the public would not thereon look into the side of the barn, and the Fourth Amendment does not prevent a police officer from doing the same thing." (Pet. Cert. 8)

(3) ". . . places open to the public."

(4) ". . . for he had quite clearly exposed it to public view . . ."

Somehow the government attempts to reconcile the barn with the show windows on Fifth Avenue in New York City.

The fallaciousness of the government's statements is revealed when the location of the barn is properly stated. The private driveway was secured by a locked chain. No member of the public could enter. The private driveway was approximately one half mile in length. The public could not travel this road. The barn was located in a clearing surrounded by woods, circled by a perimeter fence and not visible from the public road or the perimeter fence. The contents were not visible to anyone unless one approached the barn, penetrated its encircling fence, walked under its overhang and stood next to its fishnet front covering. There was no way for a member of the public to have been present on Dunn's land without being a trespasser or invitee.

The decision below was clearly correct in that Dunn had taken a number of steps to protect his privacy and to bar the public from his property as set out above. A search warrant was required to search the barn.

CONCLUSION

For the above reasons, Respondent respectfully request that the petition for writ of certiorari be denied.

Respectfully submitted,

LOUIS DUGAS, JR., P.L.C.

LOUIS DUGAS, JR.
1804 N. 16th Street
Orange, Texas 77630
409-883-3506
State Bar Card # 06173000
Attorney for Respondent

A P P E N D I X

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 81-1200

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONALD DALE DUNN,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas

(February 4, 1986)

Before WISDOM, POLITZ, and TATE, Circuit Judges.

PER CURIAM:

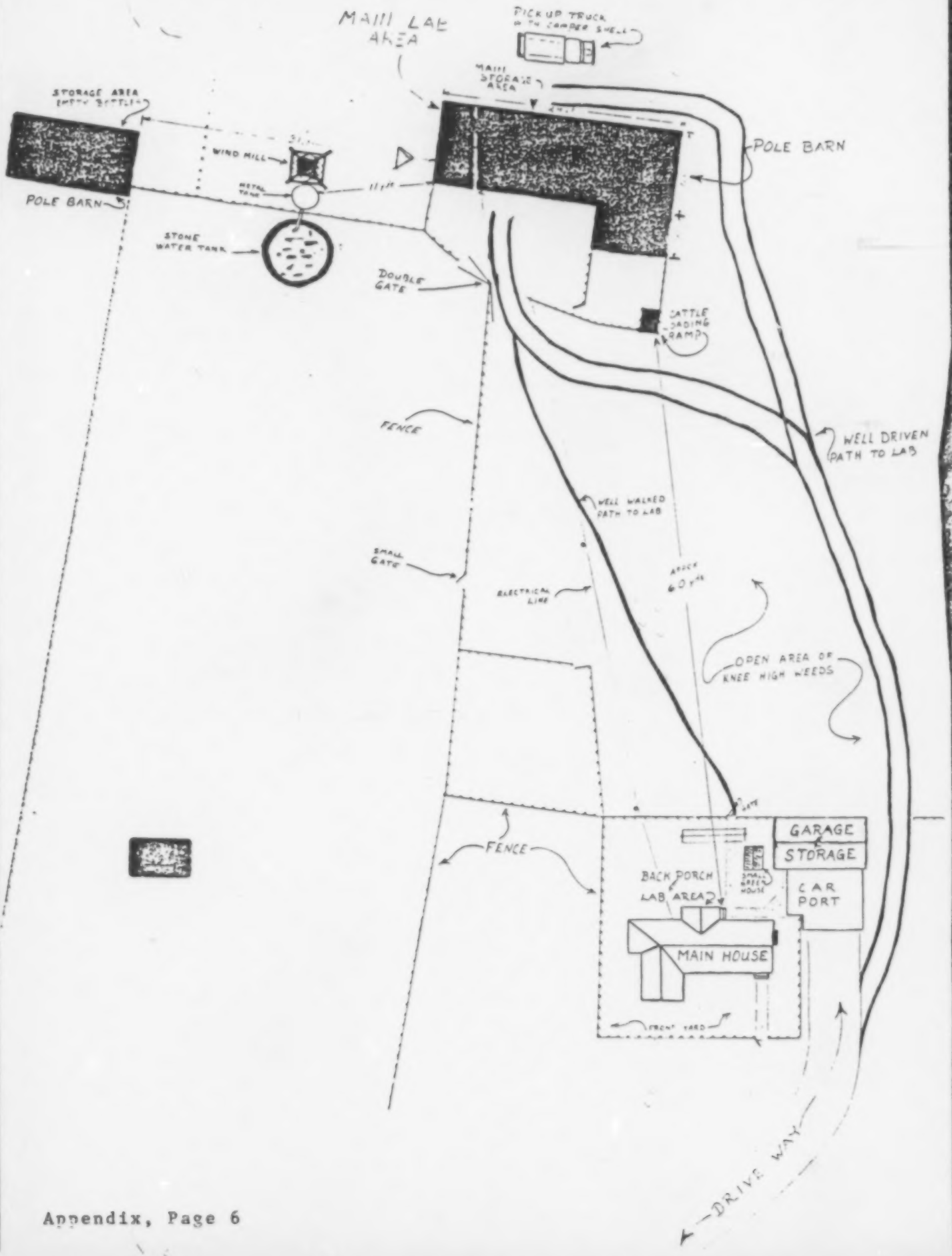
Upon first consideration of this appeal we reversed the convictions of Ronald Dale Dunn finding, inter alia, that a barn which was the subject of a warrantless search was within the protected curtilage of the Dunn ranch house. **United States v. Dunn**, 674 F.2d 1093 (5th Cir. 1982). The Supreme Court granted the government's petition for writ of certiorari, **United States v. Dunn**, 467 U.S. 1201, 104 S.Ct. 2380, 81 L.Ed.2d 340 (1984), and vacated our disposition of Dunn's appeal, remanding "for further consideration in light of **Oliver v. United States**," 466

U.S. 170, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984). On remand we held that the barn in question was not within the curtilage, **United States v. Dunn**, 766 F.2d 880 (5th Cir. 1985). By an Order dated January 17, 1986, we vacated that opinion and returned the matter to the panel.

Upon further collegial consideration of the mandate of the Supreme Court in the course of the disposition of the government's petition for rehearing with suggestion for rehearing en banc, we have determined that the holding and teachings of **Oliver v. United States** neither direct nor require that the subject barn be found to be outside the curtilage of the Dunn ranch house. We again have examined painstakingly the facts reflected in this record, as set forth in detail in our two prior panel opinions, against the backdrop of **Oliver v. United States** and other decisions of the Supreme Court and of this court. To reflect the relative positions of the buildings and improvements, we attach a site plat of the ranch house enclave which was filed in evidence as a government exhibit. Upon studied reflection, we now conclude and hold that the barn was inside the protected curtilage.

Accordingly, we reinstate the opinion rendered on May 7, 1982, reported at 674 F.2d 1093 (5th Cir. 1982), as our disposition of this appeal by Ronald Dale Dunn.

PRIOR OPINION REINSTATED.


MAIN LAB AREA
PICK UP TRUCK W/ CAMPER SHELL
MAIN STORAGE AREA
STORAGE AREA EMPTY BOTTLES
POLE BARN
WIND MILL
METAL TANK
STONE WATER TANK
POLE BARN
DOUBLE GATE
CATTLE LOADING RAMP
FENCE
WELL DRIVEN PATH TO LAB
WELL WALKED PATH TO LAB
SMALL GATE
ELECTRICAL LINE
APPROX 60 YDS
OPEN AREA OF KNEE HIGH WEEDS
GATE
FENCE
GARAGE
STORAGE
BACK PORCH
LAB AREA
SMALL GREEN HOUSE
CAR PORT
MAIN HOUSE
FRONT YARD
DRIVE WAY

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NO. 85-998

UNITED STATES OF AMERICA, PETITIONER

V.

RONALD DALE DUNN

CERTIFICATE OF SERVICE

LOUIS DUGAS, JR., hereby certifies that he is a member of the bar of the Supreme Court of the United States and counsel for RONALD DALE DUNN, Respondent in the above matter; and that a true and correct copy of the above and foregoing Brief in Opposition has been mailed to the attorneys for the Petitioner, the Honorable Charles Fried, Solicitor General of the United States of America, by mail, postage prepaid, on this 19th day of February, 1986.

LOUIS DUGAS, JR.